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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Mi Familia Vota, et al.,
Plaintiffs,
v.
Katie Hobbs, et al.,
Defendants.

Living United for Change in Arizona, et al.,
Plaintiffs,
v.
Katie Hobbs,
Defendant,
and
State of Arizona, et al.,
Intervenor-Defendants.

Case No. 2:22-cv-00509-SRB

**MFV PLAINTIFFS' OPPOSITION
TO STATE'S CONSOLIDATED
MOTION TO DISMISS**

1 Poder Latinx,

2 Plaintiff,

3 v.

4 Katie Hobbs, et al.,

5 Defendants.

6 United States of America,

7 Plaintiff,

8 v.

9 State of Arizona, et al.,

10 Defendants.

11 Democratic National Committee, et al.,

12 Plaintiffs,

13 v.

14 State of Arizona, et al.,

15 Defendants,

16 and

17 Republican National Committee,

18 Intervenor-Defendant.

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Table of Contents

I. MFV/VL have standing and their claims are ripe..... 1

II. Counts I, II, and III allege cognizable constitutional claims..... 2

 A. Legal standard. 2

 B. MFV/VL sufficiently allege burdens to sustain each claim. 3

 C. The State’s interests cannot justify the burdens on the rights alleged. 6

III. Count IV alleges a cognizable claim under the NVRA. 7

IV. Count V alleges a cognizable claim under the Civil Rights Act..... 7

 A. Private plaintiffs may enforce the Materiality Provision. 8

 B. MFV/VL sufficiently plead a Materiality Provision claim. 10

1 The State contends Mi Familia Vota and Voto Latino (“MFV/VL”) lack standing
 2 and fail to state cognizable claims, moving to dismiss their Second Amended Complaint
 3 (“SAC”) (ECF No. 65). MFV/VL are nonprofits with the mission of engaging Latinx
 4 communities politically, including through voter registration and mobilization in Arizona.
 5 SAC ¶¶ 16–21. They allege H.B. 2492: (1) imposes unjustifiable burdens on the right to
 6 vote; (2) strips current voters of the right to vote without sufficient due process; (3) violates
 7 equal protection by treating voters differently based on the form they use to register; (4)
 8 violates the NVRA; and (5) violates the Civil Rights Act. *See generally id.* These are viable
 9 claims and MFV/VL have standing to pursue them. The Motion should be denied.¹

10 **I. MFV/VL have standing and their claims are ripe.**

11 MFV/VL have standing because they allege injuries in fact, traceable to Defendants,
 12 and redressable by this Court. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992). The
 13 State challenges only their injury, as insufficient or not ripe.² It is wrong on both counts.

14 MFV/VL allege that H.B. 2492 threatens their missions by disenfranchising the
 15 communities they exist to educate, register, and mobilize, requiring them to divert
 16 resources to education about H.B. 2492 and to identify and re-register impacted voters. *See*
 17 SAC ¶¶ 18, 21; Decl. of Carolina Rodriguez-Greer (“MFV Decl.”) ¶¶ 5, 12, 14, 15, 19;
 18 Decl. of Ameer Patel (“VL Decl.”) ¶¶ 7, 11, 12, 19, 20, 23. MFV/VL’s allegations are more
 19 than sufficient. *See, e.g., Sabra v. Maricopa Cnty. Cmty. Coll. Dist.*, 44 F.4th 867, 879–80
 20 (9th Cir. 2022); *Nat’l Council of La Raza v. Cegavske*, 800 F.3d 1032, 1036 (9th Cir. 2015);
 21 *Arcia v. Fla. Sec’y of State*, 772 F.3d 1335, 1341–42 (11th Cir. 2014). This is not like *La*
 22 *Asociación de Trabajadores de Lake Forest v. City of Lake Forest*, 624 F.3d 1083 (9th Cir.
 23 2010), where the plaintiff “failed to assert any [facts] . . . that it was forced to divert
 24 resources . . . because of the defendants’ actions.” *Id.* at 1088. “Given that as part of their
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26 ¹ MFV/VL incorporate the oppositions filed by the other Plaintiffs.

27 ² MFV/VL do not argue associational standing and filed suit against the Secretary,
 28 Attorney General, and all county election recorders. The State’s arguments regarding
 associational standing, traceability, or redressability do not apply.

missions” MFV/VL work to enfranchise voters, “it cannot be said” they “are spending money to fix a problem that otherwise would not affect them.” *We Are Am./Somos Am., Coal. of Ariz. v. Maricopa Cnty. Bd. of Supervisors*, 809 F. Supp. 2d 1084, 1099–1100 (D. Ariz. 2011) (distinguishing *City of Lake Forest*).³

Second, the matter is ripe for the reasons detailed in Poder Latinx’s opposition. The statutory text *requires* voters to be removed from the rolls and threatened with investigation or prosecution, and the State has not said it will not enforce it. Accordingly, “the statute will be enforced against some” voters MFV/VL helped or will help register. *Fla. State Conf. of N.A.A.C.P. v. Browning*, 522 F.3d 1153, 1164 (11th Cir. 2008); MFV Decl. ¶ 13; VL Decl. ¶¶ 9, 13. MFV/VL must divert resources away from mission-critical efforts to prevent these threats. MFV Decl. ¶¶ 5, 12, 14, 15, 19; VL Decl. ¶¶ 7, 11, 12, 19, 20, 23.

II. Counts I, II, and III allege cognizable constitutional claims.

MFV/VL allege facts that, taken as true, allege claims that H.B. 2492 violates the right to vote, due process, and equal protection under any applicable framework. *See Boquist v. Courtney*, 32 F.4th 764, 773–74 (9th Cir. 2022). The Motion should be denied.

A. Legal standard.

In this Circuit, challenges to state election laws imposing burdens on the right to vote have generally been evaluated using the *Anderson-Burdick* test. This is no “litmus-paper test” neatly separating “valid from invalid restrictions”; in each case, the Court must carefully examine the facts to weigh “the character and magnitude of [plaintiffs’] asserted injury to the rights protected,” against “the precise interests put forward by the State as justifications for the burden imposed by its rule.” *Anderson v. Celebrezze*, 460 U.S. 780,

³ The stage of this action also distinguishes *Friends of the Earth v. Sanderson Farms, Inc.*, 992 F.3d 939, 942–43 (9th Cir. 2021) (finding no standing after years of litigation and extended discovery); *Jacobson v. Fla. Sec’y of State*, 974 F.3d 1236, 1250 (11th Cir. 2020) (post-trial); and *NAACP v. City of Kyle*, 626 F.3d 233, 238–39 (5th Cir. 2010) (post-trial). Standing “must be supported with the manner and degree of evidence required at” relevant stage; on a motion to dismiss, general factual allegations of injury traceable to defendants’ conduct are sufficient. *Mecinas v. Hobbs*, 30 F.4th 890, 896–97 (9th Cir. 2022).

1 789 (1983). It “also must consider the extent to which those interests make it necessary to
 2 burden the plaintiff’s rights.” *Id.* In other words, *Anderson-Burdick* applies a “means-end
 3 fit framework.” *Pub. Integrity All. v. City of Tucson*, 836 F.3d 1019, 1024 (9th Cir. 2016).

4 Because this analysis is highly fact-intensive, *Anderson-Burdick* claims are
 5 generally not amenable to pre-discovery dismissal unless the burdens are truly *de minimis*.
 6 See, e.g., *Soltysik v. Padilla*, 910 F.3d 438, 447, 450 (9th Cir. 2018) (reversing order
 7 granting dismissal as “premature”: “without any factual record . . . we cannot say” the
 8 state’s “justifications outweigh the constitutional burdens . . . as a matter of law”); *Mecinas*,
 9 30 F.4th at 905 (“[T]he magnitude of the asserted injury . . . cannot be resolved on a motion
 10 to dismiss.”). Where, as here, plaintiffs allege infringement on multiple rights, the burden
 11 is exacerbated. See, e.g., *Yang v. Kosinski*, 960 F.3d 119, 130–34 (2d Cir. 2020) (holding
 12 burden substantial where law implicated rights to vote, due process, and association);
 13 *McLaughlin v. N.C. Bd. of Elections*, 65 F.3d 1215, 1221 (4th Cir. 1995) (finding law
 14 imposed severe burden because it “implicate[d] substantial voting, associational and
 15 expressive rights protected by the First and Fourteenth Amendments”).⁴

16 **B. MFV/VL sufficiently allege burdens to sustain each claim.**

17 *First*, MFV/VL allege that H.B. 2492 severely burdens the right to vote by denying
 18 impacted Arizonans that right entirely in presidential elections and by mail, threatening
 19 them with criminal investigation, imposing unjustified costs on new voters, and
 20 complicating an already convoluted registration process. See SAC ¶¶ 3, 62–69, 79; see also
 21 *Pub. Integrity All.*, 836 F.3d at 1024 n.2 (holding when evaluating severity of burdens,
 22 courts may consider “its impact on subgroups, for whom the burden, when considered in
 23 context, may be more severe”). The State’s reliance on *Short v. Brown*, 893 F.3d 671 (9th
 24

25 ⁴ In *Arizona Democratic Party v. Hobbs*, 18 F.4th 1179, 1195 (9th Cir. 2021), the Ninth
 26 Circuit considered a procedural due process claim under *Anderson-Burdick* that plaintiffs
 27 “d[id] not argue . . . differ[ed] in some material way from their [right to vote] claim,” thus
 28 not addressing a case, like here, with distinct due process allegations, as Poder Latinx’s
 opposition explains. Under either test, MFV/VL survive a motion to dismiss.

1 Cir. 2018), is thoroughly misplaced. *Short* involved a pilot program to send ballots to all
 2 California voters, offered first in a subset of counties. *Id.* at 674. The plaintiffs sought an
 3 injunction, arguing the program “dilute[d]” votes in the “disfavored” counties. *Id.* at 677.
 4 In rejecting the challenge, the Ninth Circuit emphasized the law did “not burden anyone’s
 5 right to vote,” and “access to the ballot” for voters outside the test counties was “exactly
 6 the same” as before. *Id.* The plaintiffs had “not even alleged . . . that the [law] w[ould]
 7 prevent anyone from voting,” nor did they cite “any authority explaining how a law that
 8 makes it easier to vote” could be unconstitutional. *Id.* at 677–78. H.B. 2492 does not make
 9 it easier to vote, and MFV Plaintiffs plausibly allege it will prevent voters who could have
 10 previously voted by mail or in presidential elections from doing so *at all*.⁵

11 *Second*, distinct from their right to vote claim, MFV/VL allege the law violates due
 12 process by stripping current federal-form voters of the right to vote by mail without notice
 13 and an opportunity to cure. SAC ¶¶ 3, 63–65, 84–85. *See, e.g., Greene v. Lindsey*, 456 U.S.
 14 444, 449 (1982) (noting due process at a minimum requires notice and an opportunity to
 15 cure). That the Ninth Circuit has evaluated election law challenges based on different rights
 16 using *Anderson-Burdick* does not collapse those rights into one indistinguishable,
 17 amorphous right, nor does it insulate the voting context from having to comply with
 18 procedural due process, a right explicitly guaranteed by the Fourteenth Amendment. *See*
 19 U.S. const., amend. 14 (“No State shall . . . deprive any person of life, liberty, or property,
 20 without due process of law . . .”); *cf. Hufford v. McEnaney*, 249 F.3d 1142, 1151 (9th Cir.
 21 2001) (holding if a “claim can be analyzed under an explicit textual source of rights in the
 22 Constitution, a court should not resort to” a more subjective standard). For each claim, the
 23 balancing of the injury’s character and magnitude may differ, based on the *right at issue*.

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 25
 26 ⁵ The State also cites *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008),
 27 and *Gonzales v. Arizona*, 677 F.3d 383 (9th Cir. 2012), but both evaluated burdens *after*
 28 the record was developed. *See Crawford*, 553 U.S. at 187; *Gonzales*, 667 F.3d at 389. They
 provide no basis to find these plaintiffs will be unable to prove that H.B. 2492’s burdens
 outweigh the State’s proffered justifications for imposing them in this case or at this stage.

1 *See, e.g., Democracy N.C. v. N.C. State Bd. of Elections*, 476 F. Supp. 3d 158, 225–29
 2 (M.D.N.C. 2020) (separately evaluating procedural due process and right to vote claims);
 3 *Self Advoc. Sols. N.D. v. Jaeger*, 464 F. Supp. 3d 1039, 1051–53 (D.N.D. 2020) (same).

4 A protected liberty interest protected by procedural due process “may arise from an
 5 expectation or interest created by state laws or policies.” *Marsh v. Cnty. of San Diego*, 680
 6 F.3d 1148, 1155 (9th Cir. 2012). Arizona has long conferred the right to vote by mail,
 7 A.R.S. § 16-541, creating precisely such an expectation. In fact, Arizona has conferred on
 8 its voters the right to vote by mail for so long that more than 30 years ago a federal district
 9 court found Arizona voters were entitled to procedural due process protections before their
 10 absentee ballots were disqualified. *Raetzel v. Parks/Bellemont Absentee Election Bd.*, 762
 11 F. Supp. 1354, 1356–58 (D. Ariz. 1990). Other courts have similarly found due process
 12 protects the right to vote absentee in states that have conferred that right. *See, e.g.,*
 13 *Democracy N.C.*, 476 F. Supp. 3d at 227 (“[H]aving ‘authorized the use of absentee
 14 ballots,’ [the state] must afford appropriate due process protections”); *Martin v. Kemp*,
 15 341 F. Supp. 3d 1326, 1338 (N.D. Ga. 2018) (similar). The State argues that this liberty
 16 interest is constrained by the “mandatory language” that a voter provide DPOC, Mot. at
 17 17, but this is a misstatement of the applicable precedent.⁶ Moreover, it is only true
 18 prospectively; previously, voters did not need DPOC to vote by mail. “Once a state creates
 19 a liberty interest, it can’t take it away without due process.” *Marsh*, 680 F.3d at 1155.

20 *Third*, H.B. 2492 denies equal protection by unjustifiably treating similarly situated
 21 voters differently. SAC ¶¶ 89–90; *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432,
 22 439 (1985) (holding equal protection requires “all persons similarly situated . . . be treated
 23 alike”); *Hobbs*, 18 F.4th at 1190 (noting burden may be heightened where allegations assert
 24 burden “falls disproportionately on a discrete group of voters”). Federal-form voters
 25 registering without DPOC will be permitted to vote in congressional elections, but state-

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 27 ⁶ Specifically, the “mandatory language” test for the creation of a liberty interest is a feature
 28 principally of prisoners’ rights cases and has been abandoned by the Supreme Court in
 those circumstances. *See Sandin v. Conner*, 515 U.S. 472, 483–84 (1995).

1 form voters presenting the same documents will have their registration rejected entirely.
 2 H.B. 2492 also arbitrarily discriminates against federal-form voters on the Federal Only
 3 Voters List by prohibiting them from voting by mail or in presidential elections. Similarly
 4 situated eligible voters not on the List retain these rights. The State’s only rationale—
 5 requiring more of state-form voters gives it more confidence they are citizens, Mot. at 18—
 6 19—neither explains the first distinction nor justifies the burdens of the second.

7 **C. The State’s interests cannot justify the burdens on the rights alleged.**

8 Separately and together, the burdens alleged are severe. But at a minimum, dismissal
 9 is inappropriate because Plaintiffs plausibly allege H.B. 2492 imposes burdens that are
 10 more than *de minimis*, and the State fails to show that even lesser burdens are justified by
 11 its purported interests in the law, or that it is necessary to advance those interests.

12 The State’s conclusory assertion that its generalized interest in “securing its
 13 elections and maintaining voter confidence easily sustains” Plaintiffs’ burdens cannot
 14 sustain dismissal. Mot. at 16. *Anderson-Burdick* requires the Court to carefully consider
 15 whether (1) the State’s proffered interests are sufficiently weighty to justify H.B. 2492’s
 16 burdens, *and* (2) there is a means-end fit between the State’s proffered interests and H.B.
 17 2492. *See supra* at Sec. II(A). The State makes *no effort* to explain how its asserted interests
 18 outweigh Plaintiffs’ specific burdens, much less show a means-end fit. Instead, it claims
 19 this case is like *Crawford*. Mot. at 16. But courts routinely reject attempts to broadly
 20 analogize to *Crawford* at this stage. *See, e.g., Mecinas*, 30 F.4th at 905; *Soltysik*, 910 F.3d
 21 at 447; *Veasey v. Perry*, 29 F. Supp. 3d 896, 915 (S.D. Tex. 2014). This is because, as
 22 *Crawford* emphasizes, *Anderson-Burdick* does not “neatly separate valid from invalid
 23 restrictions”; in each case, courts must “make the ‘hard judgment’ that our adversary
 24 system demands,” based on specific facts. 553 U.S. at 190 (citing *Anderson*, 460 U.S. at
 25 789–90). And, in *Crawford*, the Court found the state’s interests sufficient *after* petitioners
 26 failed to produce evidence of their burdens *at summary judgment*. *Id.* at 187.

27 Neither of the out-of-circuit cases the State cites relieves it of the responsibility to
 28

1 advance sufficiently weighty justifications for the burdens alleged, or to satisfy the means-
 2 fit test. *Frank v. Walker*, 768 F.3d 744 (7th Cir. 2014), did not hold that “*Anderson/Burdick*
 3 treats the State’s interests as a ‘legislative fact.’” Mot. at 16. It found only that “*whether a*
 4 *photo ID requirement promotes public confidence in the electoral system* [wa]s a
 5 ‘legislative fact.’” *Frank*, 768 F.3d at 750 (emphasis added). And the holding in *Mays v.*
 6 *LaRose*, 951 F.3d 775, 789 (6th Cir. 2020), that “[n]o opinion from this court or the
 7 Supreme Court has ever limited the record that the State can build,” is not relevant here,
 8 where the State moves to dismiss before any record-building. The State’s failure to show a
 9 means-fit between H.B. 2492 and the interests it invokes, or explain how those interests
 10 justify the law’s alleged burdens, is enough to deny its Motion. This is particularly true
 11 when Defendant Hobbs, who oversees the State’s voter registration system, has admitted
 12 that “Arizona’s early voting system is well tested and well established” and “there is no
 13 evidence of widespread fraud in Arizona’s elections.” Secretary Hobbs’ Answer to MFV
 14 Plaintiffs’ SAC ¶ 5, ECF No. 123 [hereinafter SOS].

15 **III. Count IV alleges a cognizable claim under the NVRA.**

16 As set forth by the United States and DNC, MFV/VL properly allege NVRA claims.
 17 The State fails to address the NVRA violations alleged by MFV/VL, SAC ¶¶ 96, 97, and
 18 the Secretary admits the law’s relevant provisions conflict with the NVRA. SOS ¶¶ 96, 97.

19 **IV. Count V alleges a cognizable claim under the Civil Rights Act.**

20 The Civil Rights Act’s Materiality Provision, 52 U.S.C. § 10101(a)(2)(B) (“MP”),
 21 prohibits “acting under color of law” to deny the right to vote because of an error or
 22 omission on a registration form that is immaterial to qualifications to vote. Plaintiffs allege
 23 H.B. 2492 violates this by forbidding voters from registering if they provide DPOC but fail
 24 to check a box indicating they are citizens or fail to list their birthplace on the state form,
 25 and prohibiting federal-form voters from voting in presidential elections or by mail absent
 26 DPOC. *See* SAC ¶¶ 102–05. The State first contends the MP has no private right of action;
 27 second, it argues the claim does not apply here. Both lack merit.

1 **A. Private plaintiffs may enforce the Materiality Provision.**

2 The statutory text, legislative history, and Supreme Court precedent all support
3 finding there is a private right of action to enforce the MP. The Ninth Circuit has not
4 considered the question, but the Eleventh Circuit thoroughly rejected the arguments that
5 the State makes here in *Schwier v. Cox*, 340 F.3d 1284 (11th Cir. 2003).

6 The Court first asks “whether Congress intended to create a federal right.” *Gonzaga*
7 *Univ. v. Doe*, 536 U.S. 273, 283 (2002). Section 10101(a)(2)(B)’s rights-creating
8 language—“no person” “shall” deny an individual’s right to vote—evinces clear
9 congressional intent to create a private right of action: it directly parallels language in Title
10 VI, 42 U.S.C. § 2000d, and Title IX, 20 U.S.C. § 1681, which the Supreme Court has held
11 creates private rights of action. *Gonzaga*, 536 U.S. at 284 n.3 (pointing to the “right- or
12 duty-creating language” of Titles VI and IX of “no person” and “shall”); *see also Schwier*,
13 340 F.3d at 1296; *La Unión del Pueblo Entero v. Abbott*, No. 5:21-cv-0844-XR, 2022 WL
14 3045657 at *29–30 (W.D. Tex. Aug. 2, 2022). Section 10101(a)(1) includes further rights-
15 creating language, which unambiguously confers a personal right, stating: “[a]ll citizens .
16 . . who are otherwise qualified by law to vote . . . shall be entitled and allowed to vote at
17 all such elections.” (emphasis added); *see also Planned Parenthood Ariz. Inc. v. Betlach*,
18 727 F.3d 960, 966 (9th Cir. 2013) (“While express use of the term individuals (or persons
19 or similar terms) is not essential to finding a right for § 1983 purposes, usually such use is
20 sufficient for that purpose.” (quotations omitted)); *Watson v. Weeks*, 436 F.3d 1152, 1160–
21 61 (9th Cir. 2006) (holding right existed to enforce statute due to mandatory language
22 conferring benefits for “all individuals”).

23 When a statute includes clear rights-conferring language, § 1983 private
24 enforcement is presumed unless “Congress specifically foreclosed a remedy.” *Gonzaga*,
25 536 U.S. at 284 n.4 (quotations omitted). The Court “should ‘not lightly conclude that
26 Congress intended to preclude reliance on § 1983 as a remedy’ for deprivation of a
27 federally secured right.” *Watson*, 436 F.3d at 1161 (quoting *Golden State Transit Corp. v.*
28

1 *Los Angeles*, 493 U.S. 103, 107 (1989)). To overcome the presumption of a private right
 2 of action, the State must point to “express[]” statutory evidence or “a comprehensive
 3 enforcement scheme” incompatible with § 1983 enforcement. *Id.* at 1158–59. Whether
 4 Congress established a “more restrictive private remedy” “has been the dividing line” if a
 5 § 1983 action lies. *Fitzgerald v. Barnstable Sch. Comm.*, 555 U.S. 246, 256 (2009) (quoting
 6 *City of Rancho Palos Verdes v. Abrams*, 544 U.S. 113, 121 (2005)).

7 No “more restrictive private” enforcement scheme exists here. *Id.* The State points
 8 to the Attorney General’s enforcement power, Mot. at 25–26, but that is compatible with
 9 private enforcement. *See Gonzaga*, 536 U.S. at 284 n.4. Here, as in *Fitzgerald*—which held
 10 Title IX enforceable through § 1983—aggrieved parties can “file directly in court” without
 11 preconditions or exhaustion requirements. *Id.* at 255; 52 U.S.C. § 10101(d). The Attorney
 12 General’s enforcement is not mandatory, 52 U.S.C. § 10101(c), and the legislative history
 13 shows Congress did not intend to preclude private enforcement. *See H.R. Rep. No. 85-291*
 14 *(1957)* (The bill’s purpose was “to provide means of *further* securing and protecting
 15 [individuals’] civil rights.”) (emphasis added). The Attorney General’s contemporaneous
 16 testimony shows this: “Under the laws amended [here], private people will retain the right
 17 they have now to sue.” *Civil Rights Act of 1957: Hearings on S. 83*, 85th Cong. 73, 203, 1;
 18 60–61, 67–73 (1957).⁷

19 To support its contrary position, the State relies primarily on *Hayden v. Pataki*, No.
 20 00 Civ. 8586 (LMM), 2004 WL 1335921 (S.D.N.Y. June 14, 2004), which relies on *McKay*
 21 *v. Thompson*, 226 F.3d 752, 756 (6th Cir. 2000), amongst other conclusory cases. But
 22 *McKay* is flatly incorrect: it is entirely based on a 1978 Kansas case whose analysis runs
 23

24 ⁷ Beyond § 1983, the Materiality Provision itself also demonstrates “an intent to create not
 25 just a private right but also a private remedy,” *Alexander v. Sandoval*, 532 U.S. 275, 286
 26 (2001), as evidenced by section 10101(d). *See, e.g., Verizon Md., Inc. v. Public Serv.*
 27 *Comm’n of Md.*, 535 U.S. 635, 644 (2002) (provision allowing “any party aggrieved” to
 28 “bring an action” “reads like the conferral of a private right of action”); *see also* Brief for
 the U.S. as Amicus Curiae, *Migliori v. Lehigh Cnty. Bd. of Elections*, 36 F.4th 153 (3rd
 Cir. 2022) (No. 45), 2022 WL 1045078 at 7–21.

1 afoul of statutory language and Supreme Court precedent. *Schwier*, 340 F.3d at 1294–95.
 2 The State also cites *Northeast Ohio Coalition for Homeless v. Husted*, 837 F.3d 612, 630
 3 (6th Cir. 2016), ignoring it was bound to follow *McKay* and conducted no independent
 4 analysis. *See id.* Otherwise, the State cites one other unpublished district court case, *Mot.*
 5 at 26, which contains little analysis. None of these cases rebut the Eleventh Circuits’ well-
 6 supported approach.

7 **B. MFV/VL sufficiently plead a Materiality Provision claim.**

8 For the reasons set forth by Poder Latinx and the United States, the State’s argument
 9 that the MP only applies to executive action beyond state law must be rejected. Next, the
 10 State claims that, because H.B. 2492 includes notice and cure provisions, it cannot violate
 11 the MP. *Mot.* at 27–28. Courts have properly rejected the argument that cure opportunities
 12 solve MP violations. *See, e.g., Wash. Ass’n of Churches v. Reed*, 492 F. Supp. 2d 1264,
 13 1271 (W.D. Wash. Aug. 1, 2006); *La Unión*, 2022 WL 1651215 at *21 (May 24, 2022).⁸
 14 Lastly, the State claims the information demanded *is* material. *Mot.* at 28–29. Not so. H.B.
 15 2492 disenfranchises Arizonans who fail to check a box regarding citizenship or state their
 16 birthplace. Birthplace is never material to a voter’s qualifications. And applicants *already*
 17 provide citizenship information (DPOC for state-form, citizenship attestation for federal-
 18 form); the new requirements are duplicative and immaterial. SOS ¶ 102 (admitting same
 19 regarding checkbox); *League of Women Voters of Ark. v. Thurston*, No. 5:20-CV-05174,
 20 2021 WL 5312640 at *4 (W.D. Ark. Nov. 15, 2021).⁹ The same is true for registered voters
 21 now required to provide DPOC: their citizenship was *previously* otherwise verified. *See,*
 22 *e.g., Martin v. Crittenden*, 347 F. Supp. 3d 1302, 1309 (N.D. Ga. 2018).

24 ⁸ The cure opportunities the State references here deal solely with new registrants. This is
 25 separate from the provision of H.B. 2492 discussed earlier, which strips current federal
 26 form registrants of rights without notice or an opportunity to cure.

27 ⁹ *Diaz v. Cobb*, 435 F. Supp. 2d 1206 (S.D. Fla. 2006), is not analogous. There the court
 28 found checkboxes pertaining to specific qualifications were material because the voter oath
 there was a “general affirmation of eligibility.” *Id.* at 1212–13. Here, the duplicative
 questions ask for the *same information*—i.e., information pertaining to citizenship.

1 Dated: October 17, 2022

Respectfully submitted,

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